

STATE OF MICHIGAN
COURT OF APPEALS

DANIELA MUNTEANU,

Plaintiff/Counterdefendant-
Appellee,

v

GEORGE MUNTEANU,

Defendant/Counterplaintiff-
Appellant.

UNPUBLISHED

May 3, 2005

No. 252202

Wayne Circuit Court

LC No. 02-235361-DZ

Before: Donofrio, P.J., and Murphy and Borrello, JJ.

PER CURIAM.

Defendant appeals as of right from a divorce judgment. We affirm.

Defendant first argues that the trial court erred by admitting some letters found by plaintiff, which allegedly were sent to defendant by other women in Romania. Defendant additionally argues that the trial court erred in allowing plaintiff to testify that she was told by others that defendant had represented that she had died ten years earlier. Defendant contends that both the letters and plaintiff's testimony about what she was told were inadmissible hearsay. We disagree.

A trial court's decision whether to admit or exclude evidence is within its sound discretion and will not be disturbed on appeal absent an abuse of discretion. *Campbell v Sullins*, 257 Mich App 179, 196; 667 NW2d 887 (2003). An abuse of discretion is found only if an unprejudiced person, considering the facts on which the trial court acted, would say there is no justification or excuse for the ruling made, or the result is so palpably and grossly violative of fact and logic that it evidences perversity of will, a defiance of judgment, or the exercise of passion or bias. *Id.*

Hearsay is a statement, other than one made by the declarant while testifying at the trial, offered in evidence to prove the truth of the matter asserted. MRE 801(c). In this case, the letters were used to impeach defendant's testimony that he did not receive letters from other women, not to establish the truth of the matters asserted therein. Thus, they were not offered for a hearsay purpose. *Jackson v Depco Equipment Co*, 115 Mich App 570, 575; 321 NW2d 736 (1982). Contrary to what defendant argues, the trial court did not rely on the letters, but rather

on photos showing defendant with other women, as support for its finding that defendant was at fault for the breakdown of the marriage.

Plaintiff's testimony concerning what she was told by others was offered to explain why she felt that the marital relationship should be dissolved. Because her testimony was not offered to prove the truth of the comments, but rather to show the effect of the comments on her, it was not inadmissible hearsay. *People v Eggleston*, 148 Mich App 494, 502; 384 NW2d 811 (1986).

For these reasons, the trial court did not abuse its discretion in admitting the challenged testimony.

Defendant also contends that the trial court's division of the marital estate was inequitable. We disagree.

In reviewing a trial court's property division in a divorce, this Court must first consider the trial court's findings of fact. *Sparks v Sparks*, 440 Mich 141, 151; 485 NW2d 893 (1992); *Draggoo v Draggoo*, 223 Mich App 415, 429; 566 NW2d 642 (1997). The court's findings will not be reversed unless they are clearly erroneous, i.e., this Court is left with the definite and firm conviction that a mistake has been made. *Beason v Beason*, 435 Mich 791, 805; 460 NW2d 207 (1990). If this Court upholds the trial court's findings of fact, it must then decide whether the dispositional ruling was fair and equitable in light of those facts. The dispositional ruling is discretionary and should be affirmed unless this Court is left with the firm conviction that the division was inequitable. *Draggoo, supra* at 429-430.

The goal of the court when apportioning a marital estate is to reach an equitable division in light of all the circumstances. *Byington v Byington*, 224 Mich App 103, 114; 568 NW2d 141 (1997). Each spouse need not receive a mathematically equal share, but significant departures from congruence must be explained clearly by the court. *Id.* at 114-115. When dividing the estate, the court should consider the duration of the marriage, the contribution of each party to the marital estate, each party's station in life, each party's earning ability, each party's age, health, and needs, fault or past misconduct, and any other equitable circumstance. *Id.* at 115. The significance of each of these factors will vary from case to case, and each factor need not be given equal weight where the circumstances dictate otherwise. *Id.*

Defendant argues that the trial court erred in refusing to divide the marital estate equally. The court decided on a 60/40 split, in favor of plaintiff, after assigning fault to defendant. Additionally, the trial court reached its decision based on actions taken by the defendant to conceal certain assets. The trial court's finding that defendant was at fault is supported by evidence that he engaged in extramarital affairs during trips to Romania, infected plaintiff with a sexually transmitted disease, and made extravagant purchases and refused to contribute financially toward the household after his retirement. *Thames v Thames*, 191 Mich App 299, 308; 477 NW2d 496 (1991).

Because the record indicates that defendant failed to account for substantial sums of money being withdrawn from various accounts, we also conclude that the trial court did not clearly err in assessing against defendant's share of retirement assets amounts that he received as pension and IRA/401k distributions. The record indicates that defendant received significant distributions of these assets during the six-year period preceding the divorce. Additionally,

plaintiff testified that defendant did not contribute to the household after his retirement and that she paid all of the expenses. There was also evidence that defendant had his own savings and checking accounts, but would not disclose the amounts in each account. In light of this evidence, the trial court was justified in assessing the pension and IRA/401k distributions against defendant.

Finally, considering all the circumstances, we are not left with a definite and firm conviction that the trial court's ultimate property division was inequitable. *Draggoo, supra* at 429-430.

Affirmed.

/s/ Pat M. Donofrio
/s/ William B. Murphy
/s/ Stephen L. Borrello